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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,282	12/09/2003	Vickie L. Conley	279.202US3	4974
21186	7590	01/13/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			MULLEN, KRISTEN DROESCH	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,282

Applicant(s)

CONLEY ET AL.

Examiner

Kristen Droesch Mullen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-11,16,17 and 19-24 is/are rejected.
- 7) ☒ Claim(s) 8,12-15 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/9/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Vollmann et al. (4,726,380). Vollman et al. shows a system comprising means for identifying parameter interactions between feature parameters; means for defining a plurality of messages, wherein the plurality of messages includes a first type of message (lack of message), a second type of message (inquiry display) (Col. 28, lines 18-35) and a third type of message (lockout and explanation) (Col. 27, lines 47-49), wherein the first type of message indicates correctness, wherein the second type of message warns of a parameter interaction and wherein the third type of message warns of impermissible parameter settings, means for associating each of the parameter interactions with one of the message types; means for accepting a parameter value; means for examining the parameter value to determine if it causes a parameter interaction, and means for displaying a message of the message type associated with the parameter interaction if the parameter value causes a parameter interaction (Col. 27, line 38-Col. 28, line 35).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16-17, and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vollmann et al. (4,726,380) in view of Paisner (5,810,740).

With respect to claim 16, Vollmann et al. shows means for determining whether entered parameters for a programmable medical device acceptably interact with each other according to a set of rules; and means for providing a visual status indicator (different messages) based on entered parameters and the set of rules; means for providing a visual indicator for one or more acceptable parameters (lack of message); means for providing a visual indicator for one or more allowable parameters indicating a warning (inquiry display); and means for providing a visual indicator for one or more unacceptable parameters (lockout and explanation) (Col. 27, lines 38-52). Although Vollmann et al. discloses the claimed invention except for the visual status indicators being of a first color, second color, and third color respectively for the one or more acceptable parameters, allowable parameters with an indication of a warning, and unacceptable parameters, attention is directed to Paisner which shows a display that indicates the quality of an ECG signal channel with a red icon, a green icon, and a yellow icon (Col. 8, lines 8-20). Paisner teaches that the colored indicators provide a universally and quickly understood indication of status or quality. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the visual status indicators of Vollman et al. with

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visual status indicators of a green icon, a red icon, and a yellow icon, since Paisner teaches that the colored icons provide a universally and quickly understood indication.

Regarding claim 17, Vollman et al. and Paisner fail to show the green icon comprises a check, the red icon comprises a stop sign, and the yellow icon comprises a warning icon. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to employ a check for the green icon, a warning icon for the yellow icon, and a stop sign for the red icon, since these symbols are universally and quickly understood indicators, and would provide an additional indication means for those who may be color blind.

With respect to claims 19-20, Vollman et al. shows means for providing a feedback message comprising a text message for entered parameters that do not acceptably interact with each other (Col. 27, lines 47-49).

Regarding claim 21, Vollman et al. shows means for providing a feedback message or entered parameters that do not acceptably interact with each other includes means for displaying a reason why the parameters do not acceptably interact with each other (Col. 27, lines 47-49).

Regarding claim 22, it is inherent that the feedback message includes a suggestion for changing the entered parameters since the feedback message itself informing the user that the parameters do not acceptable interact suggests to the user that the entered parameters need to be changed.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vollmann et al. (4,726,380). Vollman et al. is as explained before. Vollmann et al. discloses the claimed invention except for the plurality of messages including icons indicating the level of correctness. It would have been an obvious design choice to one with ordinary skill in the art at the time the

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invention was made to modify the interactive display as taught by Vollmann et al. with the plurality of messages including icons indicating the level of correctness, since applicant has not disclosed that the use of icons provides any criticality and /or unexpected results and it appears that the invention would perform equally well with any message such as the message taught by Vollmann et al. for interacting with the programmer via the display.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-7, 9-11, 16-17, and 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31-51, and 27-29 respectively of U.S. Patent No. 6,690,972. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application are broader and are met by the narrower patent claims (the patent claims contain all the limitations of the present application claims).

Response to Arguments

7. Applicant's arguments filed 9/28/04 have been fully considered but they are not persuasive. In response to applicant's arguments that there is no teaching of a universally and quickly understood indication of status or quality in the cited portions of Paisner, the examiner asserts that a teaching need not be express. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). The strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent, that some advantage or expected beneficial result would have been produced by their combination. *In re Sernaker*, 702 F.2d 989, 994-95, 217 USPQ 1, 5-6 (Fed. Cir. 1983).

Furthermore, colored indicators of red, yellow, and green are universally and quickly understood indication of status or quality. Small children understand that a traffic signal indicating red means stop; yellow means slow; and green means go. Therefore, colored indicators of red, yellow, and green are universally and quickly understood indication of status or quality and would be obvious to one with ordinary skill in the art and small children.

Allowable Subject Matter

8. Claims 1-7, and 9-11 would be allowable if rewritten or amended to overcome the Double Patenting rejections set forth in this Office action, or upon the filing of a proper Terminal Disclaimer.

Claims 8, 12-15, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

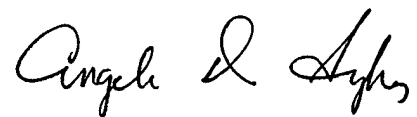
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Droesch Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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